

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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U.S. DISTRICT COURT E.D.N.Y. *leci's*
★ **APR 25 2012** ★ *4/27/12*
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FRANTZ PHILIPPE,

BROOKLYN OFFICE

Plaintiff,

ORDER

-against-

11-CV-3693 (NGG) (CLP)

NEW YORK CITY DEPARTMENT OF EDUCATION,

Defendant.

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NICHOLAS G. GARAUFIS, United States District Judge.

Plaintiff Frantz Philippe brings this pro se action against the New York City Department of Education, alleging age and race discrimination pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et. seq. (Compl. (Docket Entry # 1).) On November 30, 2011, Defendant moved to dismiss the Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (Docket Entry # 13.) The court had previously ordered that Defendant's motion to dismiss, once fully briefed, would be referred to Magistrate Judge Cheryl L. Pollak for a Report and Recommendation ("R&R"), pursuant to 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b). (Docket Entry # 11.)

On March 20, 2012, Judge Pollak issued an R&R recommending that Plaintiff's claims be dismissed without prejudice and that he be given an opportunity to amend his Complaint. (R&R (Docket Entry # 19) at 14.) No party has objected to Judge Pollak's R&R, and the time to do so has passed. See Fed. R. Civ. P. 72(b)(2). Accordingly, the court reviews Judge Pollak's R&R for clear error. See La Torres v. Walker, 216 F. Supp. 2d 157, 159 (S.D.N.Y. 2000); Gesualdi v. Mack Excavation & Trailer Serv., Inc., No. 09-CV-2502 (KAM) (JO), 2010 WL 985294, at *1 (E.D.N.Y. Mar. 15, 2010).

The court has reviewed Judge Pollak's well-reasoned R&R for clear error and finds none. Accordingly, the court ADOPTS the R&R in its entirety. See Porter v. Potter, 219 F. App'x 112, 112-13 (2d Cir. 2007). Defendant's motion to dismiss is GRANTED WITHOUT PREJUDICE. Plaintiff will be given leave to amend his Complaint within thirty days of the date of this Order, in accordance with the instructions set forth in the R&R. See Chavis v. Chappius, 618 F.3d 162, 170 (2d Cir. 2010). If Plaintiff fails to amend his Complaint by this time, the Complaint will be dismissed with prejudice.

SO ORDERED.

Dated: Brooklyn, New York
April 25, 2012

/S/
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NICHOLAS G. GARAUH~~
United States District Judge